
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

§

Plaintiff,

§

versus

§

CRIMINAL ACTION H-01-704-7

§

JOSE COLUNGA,

§

Defendant.

§

§

Opinion

On August 5, 2003, Jose Colunga was sentenced to 160 months for a drug offense. On February 24, 2005, the court denied his first request to reduce his sentence. Colunga moves again to reduce his sentence. This time, he restates his original challenge to the court's applications of the sentencing guidelines (473). He again says his indictment was illegal and his attorney acted improperly (463).

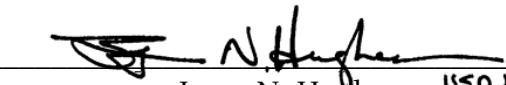
Since the adoption of the Constitution in 1789, judges have determined by a preponderance of the evidence the facts that are used to assess the particular sentence within the statutory range for the crime. Using these sentencing facts to arrive at a guideline would not change their character as long as the resulting sentence – not calculation – is within the statutory range.

Colunga was found guilty on one count. The count has a range of punishment from twenty years to life. He was sentenced to 160 months.

These claims are late, even if they were true. *Booker* does not extend Colunga's period of limitations; his sentence was below the minimum guideline, not greater than the maximum. His challenge is groundless and more than 500 days late.

His petition for relief from all or part of his sentence will be denied.

Signed January 25, 2006, at Houston, Texas.



Lynn N. Hughes
United States District Judge